

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

In the Matter of)
)
 Reciprocal Compensation for) CC Docket Nos. 96-98, 95-185
 Commercial Mobile Radio) WT Docket No. 97-207
 Service Providers)

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: The Commission

COMMENTS OF CELLULAR XL ASSOCIATES, L.P.

Cellular XL Associates, L.P ("CXL"), pursuant to the *Public Notice*¹ released May 11, 2000, hereby submits its comments on the request of Sprint PCS ("Sprint") for FCC guidance on the recovery of usage sensitive costs incurred by Commercial Mobile Radio Service ("CMRS") providers in the termination of telecommunications. CXL supports Sprint's request. The clarification requested is essential to the achievement of the principles and goals of the Telecommunications Act of 1996 (the "1996 Act") and the encouragement of wireless to wireline competition. These matters are within the primary jurisdiction of the FCC, and FCC action in this regard is appropriate.

INTRODUCTION

CXL is a provider of cellular communications services in the state of Mississippi. CXL has been providing cellular service for over ten years. CXL currently has in place a contract governing its interconnection relationship with BellSouth, and is in the process

¹ DA 00-1050 (rel. May 11, 2000).

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of discussing such agreements with other local exchange carriers (“LECs”) within the state.

It has been CXL’s experience that some LECs are either unaware of, or refuse to comply with, their interconnection obligations, and are similarly hesitant to acknowledge the interconnection rights of CMRS carriers such as the right to recover the costs incurred in terminating LEC-originated telecommunications. To the extent that state commissions become involved in the arbitration of LEC-CMRS interconnection disputes, they may be ill-equipped to address the distinct issues relating to CMRS carriers’ networks, because they historically have not regulated and monitored those networks as they have those of the LECs. Thus, guidance from the FCC regarding the portions of the CMRS network that are usage sensitive, and therefore subject to recovery in the form of termination compensation, is particularly necessary in this instance. Such guidance will advance the 1996 Act’s mandate providing that CMRS carriers are entitled to recover the additional costs associated with transporting and terminating telecommunications on their networks. It also will enable CMRS carriers to make reasoned decisions regarding whether they should accept the symmetrical rate provided for under the FCC’s rules, or expend the substantial resources to demonstrate that their termination costs exceed those of the LEC.

DISCUSSION

A. The 1996 Act Provides for Recovery of the Costs Incurred in Transporting and Terminating Telecommunications

The 1996 Act provides that reciprocal compensation rates are just and reasonable if they “provide for the mutual and reciprocal recovery by each carrier of costs associated

with the transport and termination” of calls terminated on their networks.² This principle represents a fundamental change in interconnection relationships between LECs and other telecommunications carriers. Specifically, in an effort to introduce and enhance competition within the local marketplace, the Congress attempted to create a level playing field, where all carriers transporting and terminating telecommunications originated on another carrier’s network are compensated for their costs of doing so, rather than being forced to subsidize the operations of the carrier on whose network the traffic originates. The cost recovery principles apply equally to wireline and wireless carriers.³

B. Absent Additional Guidance as Sprint Requests,
the Mandates of the 1996 Act Cannot be Achieved

The Commission has adopted rules governing the recovery of costs of transport and termination, and has provided guidance in that regard with respect to cost recovery by LECs operating wireline networks.⁴ In its *Local Competition First Report*, the Commission ruled that CMRS providers are entitled to symmetrical rates with the LEC for the transport and termination of traffic, finding the LECs’ costs to be a “reasonable approximation” of CMRS carriers’ costs.⁵ The FCC’s ruling was based, in part, on its belief that non-incumbent LECs should not be subject to the additional burden of proving up their termination costs.⁶ The FCC also ruled that CMRS have an option to receive asymmetrical reciprocal compensation if they demonstrate that the additional forward looking costs they incur to transport and terminate telecommunications exceed those of

² 47 U.S.C. § 252(d)(2)(A).

³ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order* 11 FCC Rcd. 15,499, para. 1008 (1996). (The “*Local Competition First Report*”).

⁴ See, 47 C.F.R. §§ 51.701, *et. seq.*

⁵ *Id.*, para. 1085.

⁶ *Id.*, at para. 1085.

the LEC.⁷ But the Commission did not provide guidance to carriers in demonstrating such costs to justify asymmetrical rates.

CXL respectfully submits that, absent guidance regarding the recovery of costs for specific portions of the CMRS network, the requirement of Section 252 of the 1996 Act cannot be fully satisfied. Without such guidance, there is a significant risk that CMRS carriers will not have a realistic opportunity to demonstrate and recover the usage sensitive costs of their networks. Evidence of this exists in various state commission arbitration rulings, which provide for recovery only of the switching costs of CMRS carriers and none of the additional network components used to deliver a call to the mobile subscriber.⁸ As is aptly demonstrated in the Sprint request and the associated white paper, there are several components of the CMRS network which are usage sensitive and which represent “additional costs” associated with terminating traffic. Prior state commission rulings omitting those costs from reciprocal compensation are inconsistent with the 1996 Act.

C. The FCC Should Issue Guidelines Providing that
All Usage Sensitive Costs of CMRS Networks Are
Recoverable Through Reciprocal Compensation

Sprint’s request and associated white paper accurately identify and discuss the functions performed by various components of CMRS networks.⁹ As Sprint demonstrates, portions of the CMRS network, beginning with the mobile switching

⁷ *Id.*, at para. 1091.

⁸ *Petition for Arbitration of an Interconnection Agreement Between AirTouch Paging and US WEST Communications, Inc.*, Docket No. UT-990300 (WUTC 1999) (Arbitrator’s Report and Decision); *Petition of AirTouch Paging, Inc. for Arbitration of an Interconnection Agreement with US WEST Communications, Inc.*, Docket No. 99A-001T, Decision No. C99-419 (CO PUC 1999) (Decision Regarding Petition for Arbitration); *Application of Cook Telecom, Inc. for Arbitration Pursuant to Section 252 of the Federal Telecommunications Act of 1996 to Establish an Interconnection Arrangement with Pacific Bell*, Application No. 97-02-003 (Cal. PUC 1997) (Interim Decision).

center (“MSC”) and following all the way through to the spectrum which is used to deliver a call to a mobile subscriber, perform functions necessary for the transport and termination of the telecommunications as defined in the FCC’s rules.¹⁰ Similar to Sprint’s network, CXL employs a switch, utilizes microwave or landline facilities to link its MSC to its base stations, and then uses cellular spectrum to deliver the call to the mobile subscriber. These components of CXL’s network perform the functions performed by Sprint’s PCS network. As Sprint described, each of these components of the cellular network is usage sensitive. While many carriers, including CXL operate their networks with a certain amount of additional capacity to accommodate peak periods, an increase in overall traffic levels requires the addition of capacity and facilities to accommodate that traffic.

Pursuant to the 1996 Act, these are precisely the types of costs CMRS carriers are entitled to recover: usage-sensitive costs incurred in the transport and termination of telecommunications. Nonetheless, CMRS carriers have been unable to date to recover these costs because of the differences between their networks and those of the LECs, the unfamiliarity of state utility commissions with CMRS networks, and the lack of guidance from the FCC regarding appropriate cost recovery components.

D. FCC Action is Appropriate and Essential

The Commission’s jurisdiction over this matter well-established. The Supreme Court has ruled that matters pertaining to interconnection under the 1996 Act are clearly

⁹ Cellular networks are very similar to PCS networks; therefore, the same principles apply to cellular transport and termination costs.

¹⁰ 47 C.F.R. § 51.701.

within the primary jurisdiction of the FCC.¹¹ The Sprint request relates specifically to LEC-CMRS interconnection arrangements arising out of the 1996 Act.

Moreover, guidance from the FCC on a nationwide basis is necessary. For the same reasons the FCC adopted national principles regarding LECs' recovery of transport and termination costs, it also should adopt national guidelines relating to CMRS cost recovery. Such guidance is essential to achieve consistency with respect to CMRS cost recovery. Otherwise, CMRS carriers will be subject to a regulatory patchwork in which costs are recoverable in some states, but not in others. Such inconsistency is not justified. The components of a CMRS network that are subject to recovery through reciprocal compensation do not vary state to state.¹² The FCC must set national guidelines so that state commissions addressing CMRS compensation issues will take a consistent approach in the components included in the compensation rate.

FCC guidance also is necessary to achieve the results intended by the 1996 Act. Specifically, as described above, the mandate that each carrier recover its additional costs of transporting and terminating telecommunications will not likely be achieved in the current environment of state commission rulings which fail to acknowledge the critical differences between LEC and CMRS networks and those usage-sensitive components of the CMRS network used to transport and terminate traffic. Absent relief, CMRS carriers will continue to be disadvantaged economically because they are not able to recover their usage-sensitive costs as the LECs are. This request is inconsistent with Section 252 of the 1996 Act and the goal of the Act, which is to promote competition in the local marketplace.

¹¹ *AT&T v. Iowa Utils. Bd.*, 119 S.Ct. 721, n. 6 (1999).

For the foregoing reasons, CXL respectfully submits that the clarification Sprint seeks with respect to CMRS reciprocal compensation is essential to the full implementation of the 1996 Act and is consistent with the public interest.

Respectfully submitted,

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June 1, 2000

¹² The issue of what components are subject to cost recovery (which should not vary) is different from the resultant reciprocal compensation rate set (which is dependent upon each CMRS carrier's individual costs).

Certificate of Service

I, Shandila Collins, hereby certify that the foregoing COMMENTS OF CELLULAR XL ASSOCIATES, L.P. was served this 1st day of June, 2000, by mailing true copies thereof, by United States First-Class Mail, postage prepaid, to the following:

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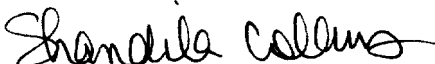
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